IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6598 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

N T BRAHAMBHATT

Versus

STATE OF GUJARAT

Appearance:

MR PARESH UPADHYAY for Petitioner
MS DARSHNA PANDIT, AGP for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 18/08/2000

ORAL JUDGEMENT

The petitioner, who did well in the Gujarat Administrative Civil Class-I and II Competitive Examinations, standing at rank no.18 in Part-I in the select list, which consisted of 101 selectees, seems to have lost his opportunity by virtue of his not taking the risk of failing at the medical test which he was facing

at the relevant time, because, his appointment was issued subject to the medical clearance and the petitioner did not want to lose his existing permanent job in the Reserve Bank of India by giving up the same and face the medical examination. He was given extension of time as per his request, but he could not get the outcome of his medical examination before the last extended date and, that too unfortunately, because, his X-ray had to be repeated due to a technical fault, as submitted by the Learned Counsel for the petitioner.

2. In the appointment letter dated 22nd/26th December, 1989, which is said to have been received by him on 26-12-1989, a copy of which is at Annexure "A" to the petition, the petitioner was required to report on 26-12-1989 itself at the Sardar Patel Institute of Public Administration, Ahmedabad to join the in-service training. If he did not join, then his appointment was liable to be cancelled, unless some concrete reasons were given by him for not being able to join. His appointment was made subject to clearance certificate being issued by the Medical Board. These terms were stipulated in paragraph 8 clauses (1), (2) and (4) of the order of appointment. The petitioner, by his communication dated 4-1-1990, intimated the Authority that it was not possible for him to join the training course on 26-12-1989 being the date on which he received the letter. He also stated that he should be asked to report for duty only after clearance at the medical examination by the Board, because, if he joined the duties subject to medical test and failed in it, he would have to face the risk of losing the existing permanent employment. It appears that the petitioner was given some extension, which ultimately ended on 5th February, 1990, as can be seen from the letter dated 1st February, 1990 at Annexure "G" to the petition. As per the endorsement made below the said letter, it seems to have been received on 6th February, 1990. It appears from the communication dated 16-1-1990 from the Civil Hospital, Ahmedabad, a copy of which is at Annexure "D" to the petition, that the petitioner had appeared before the Medical Board on 9-1-1990. He was called for X-ray of Chest. Then again he was called for a repeat X-ray on 5-2-1990, as per the endorsement appearing below the letter dated 6-1-1990. The petitioner did appear on 5-2-1990 for the repeat X-ray and according to the Learned Counsel for the petitioner, the medical report must have been sent by the Board to the Department. However, by the impugned resolution dated 13-2-1990 at Annexure "H" to the petition, the appointment of the petitioner was cancelled on the ground that he had not reported for duties within

the time extended.

3. The facts on the record show that the petitioner clearly was a victim of circumstances. He did appear before the Medical Board in good time, but was called again on 5-2-1990 for a repeat for X-ray. That was not a fault on the part of the petitioner. The petitioner was already given extension of time, in view of his apprehension that if he did not clear medical examination he might lose his existing job. In fact, as per rule 5 of the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967, no person can be appointed to any service or post if he had failed to pass the test for physical fitness. Therefore, if the petitioner did not pass the medical test, he could not have been appointed on regular basis to the post and since his appointment was subject to his passing medical test, he would have lost the job after having given up his existing permanent post in the Reserve Bank of India if he failed at the medical test. In view of the peculiar facts of this case, it would, therefore, be appropriate for the respondent Authorities to reconsider the case of the petitioner. The learned Counsel for the petitioner states that the petitioner will give a fresh representation in the matter and if the cancellation of his appointment order is withdrawn and his appointment order is restored, the petitioner will not claim any service benefit for the period prior to his reporting for duties. It was also submitted that the petitioner had other compelling reasons at the relevant time. Because his father had died when he was young and he had to look-after his younger brothers and sisters he could not take the risk of losing his existing job in the Reserve Bank of India, when medical test for the new job was yet to be held. The facts clearly warrant reconsideration of the petitioner's case by the concerned authorities.

4. It is, therefore, directed that if the petitioner makes representation within two weeks from today, the respondent authorities will consider the same sympathetically, keeping in view his high rank in the select list and the circumstances that may be pointed out by him, as also the requirement of Rule 5, which stipulated that no person could be appointed, if he had failed to pass medical test, and make a fresh order in accordance with law without being coloured by the order of cancellation of his appointment made earlier. This may be done within eight weeks of the receipt of the representation from the petitioner. Rule is made absolute accordingly with no order as to costs.

18-8-2000 (R.K.Abichandani, J.)

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